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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**
10 **AT SEATTLE**

11 STATE OF WASHINGTON,

12 Plaintiff,

13 v.

14 ENVIRONMENTAL PROTECTION
15 AGENCY, an agency of the United
16 States, and E. SCOTT PRUITT, in his
17 official capacity as Administrator,

18 Defendants.

NO.

COMPLAINT

(Freedom of Information Act,
5 U.S.C. § 552)

19 **I. INTRODUCTION**

20 1. This is an action under the Freedom of Information Act (FOIA), 5 U.S.C.
21 § 552, seeking the release of records unlawfully withheld by the Environmental Protection
22 Agency (EPA).

23 2. On October 31, 2017, EPA Administrator E. Scott Pruitt issued a directive
24 that purports to prohibit certain people who receive EPA grants from serving on EPA
25 advisory committees.
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1 3. On March 12, 2018, the Office of the Attorney General for the State of
2 Washington (AGO) submitted a request for certain documents to EPA, via both FOIAonline
3 and the U.S. Postal Service.

4 4. The request sought “All records of any communication from any
5 Environmental Protection Agency employee or designee (including but not limited to Tamue
6 L. Gibson, Edward Hanlon, and Aaron Yeow) to any current or former member of any EPA
7 Federal Advisory Committee, related to Administrator Pruitt’s October 31, 2017 directive
8 entitled ‘Strengthening and Improving Membership on EPA Federal Advisory Committees’”
9 from October 31, 2017 to March 1, 2018.

10 5. On March 12, 2018, AGO received an automated notice confirming that the
11 FOIA request had been received and assigned a tracking number.

12 6. On March 22, 2018, AGO received a notice that its request for a fee waiver
13 for the FOIA request had been fully granted.

14 7. Aside from the notice regarding the fee waiver, AGO has received no further
15 communication from EPA responding to the request.

16 8. In the months since Administrator Pruitt’s directive, members of EPA
17 advisory committees have received correspondence from EPA purporting to implement
18 Administrator Pruitt’s directive, and inquiring whether they are principal investigators, co-
19 investigators, or otherwise receive a direct benefit from an EPA grant.

20 II. JURISDICTION AND VENUE

21 9. This Court has jurisdiction over this action under the Freedom of Information
22 Act, 5 U.S.C. § 552(a)(4)(B), and under 28 U.S.C. § 1331, because this action arises under the
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1 laws of the United States, including FOIA and the Declaratory Judgment Act,
2 28 U.S.C. § 2201.

3 10. Venue is proper in this court under 5 U.S.C. § 552(a)(4)(B), as the FOIA
4 request was issued from a State of Washington office in Seattle, in the Western District of
5 Washington.
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7 11. Because EPA failed to respond to the State of Washington's FOIA request, even
8 to notify AGO of an extension of time, within 20 business days, no administrative appeal is
9 required under 40 CFR § 2.104(a).

10 III. PARTIES

11 12. Plaintiff State of Washington is a sovereign entity and brings this action to
12 protect its own sovereign and proprietary rights, and as *parens patriae* on behalf of its affected
13 citizens and residents. The Attorney General is the chief legal adviser to the State of
14 Washington. The Attorney General's powers and duties include acting in federal court on
15 matters of public concern. This challenge is brought pursuant to the Attorney General's
16 independent constitutional, statutory, and common law authority to bring suit and obtain relief
17 on behalf of the State of Washington.
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19 13. Defendant EPA is an agency of the United States. EPA has possession of and
20 control over the records sought by the State of Washington in its March 12, 2018 request.
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22 14. Defendant Edward Scott Pruitt is the Administrator of the EPA, and is named
23 only in his official capacity.
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IV. STATUTORY BACKGROUND

15. FOIA requires agencies to “make available to the public information.” 5 U.S.C. § 552(a). Any information subject to FOIA must be disclosed. “[E]ach agency, upon any request for records . . . shall make the records promptly available to any person.” Id., § 552(a)(3). Additionally, agencies have an affirmative duty to make available “statements of policy and interpretations which have been adopted by the agency” Id., § 552(a)(2)(B).

16. “[U]pon any request for records made under [§ 552(a)](1), (2), or (3),” an agency has 20 business days to determine whether to comply. Id., § 552(a)(6)(A). EPA’s FOIA regulations also require a response within 20 days. 40 C.F.R. 2.104 (a).

17. An agency may only withhold documents that fall within one of the enumerated exemptions from FOIA.

18. If an agency withholds documents, it must provide a “*Vaughn* Index” that adequately identifies the specific documents withheld. See *Vaughn v. Rosen*, 484 F.2d 820, 827 (D.C. Cir. 1973). “A withholding agency must describe *each* document or portion thereof withheld, and for *each* withholding it must discuss the consequences of disclosing the sought-after information.” *King v. U.S. Dep’t of Justice*, 830 F.2d 210, 223–24 (D.C. Cir. 1987) (emphasis in original). See *Wiener v. FBI*, 943 F.2d 972, 978 (9th Cir. 1991) (requiring a *Vaughn* Index and finding it inadequate); *Andrus v. United States Dep’t of Energy*, 200 F. Supp. 3d 1093, 1105 (D. Idaho 2016) (same).

19. A court may review an agency’s decision to withhold documents, and “the burden is on the agency to sustain its action.” 5 U.S.C. § 552(a)(4)(B). An agency cannot justify its withholding by offering nothing more than “[c]onclusory and generalized

1 allegations.” *Nat’l Parks & Conservation Assn’ v. Kleppe*, 547 F.2d 673, 680 (D.C. Cir. 1976).
 2 When the agency fails to sustain its burden, the court may “order the production of any agency
 3 records improperly withheld from the complainant.” 5 U.S. C. § 552(a)(4)(B).
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5 **V. STATEMENT OF FACTS**

6 20. On March 12, 2018, the Office of the Attorney General of the State of
 7 Washington (AGO) submitted a request for certain documents to EPA, via both FOIAonline
 8 and the U.S. Postal Service.

9 21. The March 12, 2018 request sought “All records of any communication from
 10 any Environmental Protection Agency employee or designee (including but not limited to
 11 Tamue L. Gibson, Edward Hanlon, and Aaron Yeow) to any current or former member of any
 12 EPA Federal Advisory Committee, related to Administrator Pruitt’s October 31, 2017 directive
 13 entitled ‘Strengthening and Improving Membership on EPA Federal Advisory Committees’”
 14 from October 31, 2017 to March 1, 2018. The request further specified that “This request
 15 includes communications sent, received, or stored on personally owned or controlled email
 16 accounts, mobile phones, computers or other mobile devices;” “This request includes
 17 communications inquiring whether members of Advisory Committees have, administer, or
 18 work on EPA grants;” and “This request includes communications requesting that Advisory
 19 Committee members resign or refrain from re-appointment to Advisory Committees, or recuse
 20 themselves from any matters before the Advisory Committees.”
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23 22. On March 12, 2018, AGO received an automated notice confirming that the
 24 FOIA request had been received and assigned a tracking number.
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1 23. On March 22, 2018, AGO received a notice that its request for a fee waiver
2 for the FOIA request had been fully granted.

3 24. Aside from the notice regarding the fee waiver, AGO has received no further
4 communication from EPA responding to the request.

5 25. EPA was required by FOIA to respond to the State of Washington's FOIA
6 request by April 9, 2018.

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8 **VI. FIRST CLAIM FOR RELIEF**

9 **Violation of the Freedom of Information Act – Failure to Respond (All Defendants)**
10 **5 U.S.C §§ 552(a)(3), (a)(4)(B)**

11 26. Plaintiff realleges and incorporates by reference each of the allegations set forth
12 in the preceding paragraphs.

13 27. Defendants violated FOIA by failing to respond to the State of Washington's
14 request for records within 20 business days.

15 **VII. SECOND CLAIM FOR RELIEF**

16 **Violation of the Freedom of Information Act – Failure to Produce Records (All**
17 **Defendants)**
18 **5 U.S.C §§ 552(a)(3), (a)(4)(B)**

19 28. Plaintiff realleges and incorporates by reference each of the allegations set forth
20 in the preceding paragraphs.

21 29. Defendants further violated FOIA by failing to conduct searches reasonably
22 calculated to locate the requested records, and promptly provide records, or reasonably
23 segregable portions of lawfully exempt responsive records, in response to the State of
24 Washington's request for records.

VIII. PRAYER FOR RELIEF

The State of Washington respectfully requests that this Court:

1. Declare that the Defendants violated FOIA by failing to make a determination on the FOIA requests within the time period prescribed by law;
2. Declare that Defendants violated FOIA by failing to conduct searches reasonably calculated to locate the requested records, and promptly provide all responsive records;
3. Order Defendants to provide a determination on the State of Washington's FOIA request, at no cost to the State.
4. Order Defendants to conduct searches reasonably calculated to locate the requested records, and release all records responsive to the FOIA request within twenty days of this Court's order, at no cost to the State of Washington.
5. Enjoin Defendants from withholding agency records and order the production of all agency records improperly withheld from the State of Washington;
6. Retain jurisdiction over this action to ensure the processing of the State of Washington's FOIA request is in compliance with FOIA and any orders of this Court;
7. Award Plaintiff its costs of litigation, including reasonable attorney fees as provided by FOIA, and any other applicable provision of law; and
8. Grant such other relief as the Court may deem just and proper.

1 DATED this 3rd day of May, 2018.

Respectfully submitted,

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5 By: s/ William R. Sherman

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